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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/730,220  | 12/08/2003  | Gerald V. Arienzo    | 90106-002-CIP       | 4639             |
| 30184 7590 04/03/2009<br>KAPLAN WARD & PATEL LLC<br>CUMBERLAND CENTER II<br>3100 CUMBERLAND BLVD, SUITE 1400<br>ATLANTA, GA 30339 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| MOSS, KERI A  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 1797  |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/730,220

**Applicant(s)**

ARIENZO, GERALD V.

**Examiner**

KERI A. MOSS

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicants' amendment filed January 12, 2009 is hereby acknowledged. Claims 1-20 are pending.

#### ***Response to Amendment***

1. The terminal disclaimer filed January 12, 2009 has been approved and therefore the rejection of claims 1, 6, 11 and 19-20 under an obviousness theory of double patenting has been withdrawn.
2. The rejection of claims 1-7, 10-15 and 18-20 as anticipated by Brittin et al. has been maintained.

#### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims **1-7, 10-15 and 18-20** are rejected under 35 U.S.C. 102(e) as being anticipated by Brittin et al. (USP 6,209,256). Brittin discloses a single discrete animal attractant bubble comprising a solution comprising a sufficient amount of a surface active agent to allow formation of said bubble, along with a sufficient amount of an animal attractant agent to provide the attractant nature of said bubble (claim 1). The solution comprises an aqueous solution and the surface active agent is selected from the group of anionic, cationic, non-ionic and ampholytic surfactants (column 5 line 65-column 6 line10). The attractant is a natural (column 3 lines 54-67) or artificial animal attractant (column 4 lines 24-32) that is released in the form of atomized droplets. The surface active agent is soap (column 5 line 65-column 6 line10). The animal attractant

may be extracts or an olfactory agent (column 3 lines 54-67). Britton also discloses a method of distributing a scented animal attractant lure comprising the steps of a) forming a single, discrete bubble comprising an animal attractant and b) releasing the bubble into the air whereby the bubble may travel according to natural or artificial air currents in order to more effectively target and geographically distribute the animal attractant (Experiment 2). Britton further teaches repeating steps a) and b) until a desired plurality of single discrete bubbles have been produced (Experiment 2).

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims **8-9 and 16-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Brittin et al. in view of Bell (USP 5,672,342). See Brittin, supra. Brittin teaches using soap as a surface active agent, but does not expressly state that glycerin should be the soap ingredient. Brittin also does not expressly teach using animal estrous as the animal attractant agent. Bell discloses a solution comprising a sufficient amount of a surface active agent to allow formation of a bubble (in accordance with applicants' specification), along with a sufficient amount of an animal attractant, such as estrous, agent to provide the attractant nature of the solution (claim 1). The solution comprises an aqueous solution and the surface active agent is selected from the group of anionic, cationic, non-ionic and ampholytic surfactants such as glycerin in less than 1% glycerin solution (column 3). The attractant is a natural or artificial animal attractant (column 3).

The surface active agent is soap (column 3). The animal attractant may be estrous or an olfactory agent (column 3).

The purpose behind Brittin's invention is to make an environmentally friendly way of attracting animals, specifically insects (column 1). Brittin also teaches that common animal attractants relate to odiferous attractants, which mimic smells associated with feeding or reproductive cycles (column 1). Consistent with Brittin's purpose, Bell teaches an environmentally friendly way of attracting animals, specifically with the use of natural estrous. It would have been obvious for one of ordinary skill in the art to improve on the teachings of Brittin by combining Brittin's device with the solution taught by Bell in order to attract animals and gain the advantages of an environmentally friendly system of attracting animals.

In addition, one of ordinary skill in the art would have been motivated to modify Brittin specifically with the glycerine solution from Bell in order to gain its preservative benefits (see column 3) and to ensure that the animal estrous does not spoil.

### ***Response to Arguments***

7. Applicant's arguments with respect to the rejection under Miller et al. are persuasive, and the Miller reference has been withdrawn. New grounds for rejection have been made in light of the amendments to the claims.
8. Applicant's arguments filed January 12, 2009 with respect to the rejections under Brittin and Bell have been fully considered but they are not persuasive.

9. Applicant argues that Brittin's bubbles "are not structurally cohesive as defined in applicant's invention." As stated in the previous office action in paragraph 9, the bubble solution of Brittin comprises the necessary ingredients for forming a bubble capable of floating in air, i.e. soap, as demonstrated by applicant's specification. Thus, Brittin's disclosure is inherently capable of performing the claimed intended use. Attorney arguments cannot take the place of evidence. MPEP § 716.01(c)(II). Applicant is encouraged to provide evidence that Brittin's invention is not capable of forming a single animal attractant bubble for floating in integral and discrete form for a period of time.

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., applicant's bubble is formed individually by blowing a gas to be trapped within a structural film, in the air and for release into the air, whereupon it floats "downwind" for such a period of time upon air currents and through the air until it finally collapses and disperses the animal attractant in atomized form through the air) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

11. Applicant argues that none of the references combines the single, integral and discrete structure of Applicant's bubble with the requisite surface active agent and animal attractant agent as defined within Applicant's claims. The Examiner disagrees as both references disclose the surface active agent as claimed in claims 3 and 7 and the animal attractant as claimed in claim 4, see rejections *supra*.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KERI A. MOSS whose telephone number is (571)272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Keri A. Moss/  
Examiner, Art Unit 1797

/Maureen M. Wallenhorst/  
Primary Examiner, Art Unit 1797